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Rule ID(s): 6182
File Date: 4/21/16
Effective Date: 7/20/16

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	State Board of Equalization
Division:	
Contact Person:	Kelsie Jones, Executive Secretary
Address:	312 Rosa L Parks Ave., Ste. 900, Nashville, TN
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0600-10	Subsidized Affordable Housing
Rule Number	Rule Title
0600-10-.01	Purpose
0600-10-.02	Definitions
0600-10-.03	Determining Value for LIHTC Property
0600-10-.04	Determining Value for Rural Rental Housing Property
0600-10-.05	Determining Value for Section 1602 Affordable Housing
0600-10-.06	Implementation
0600-10-.07	Effective date

Substance of proposed rules:

Chapter 0600-10
Subsidized Affordable Housing

0600-10-.01 Purpose

The purpose of these rules is to define the value of subsidized affordable housing for property taxes in a manner that is certain and predictable, that furthers the federal incentives to assure a reasonable affordable housing supply, and that comports with state constitutional standards for ad valorem taxation.

Authority: T.C.A. §§ 4-3-5103 and 67-1-305.

0600-10-.02 Definitions

As used in these rules, unless the context otherwise requires:

- (1) "Low-income housing tax credit (LIHTC) property" means low-income housing property restricted under government regulations pursuant to § 42 of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 42, the low-income housing tax credit program;
- (2) "Rural rental housing property" means property financed or refinanced by a loan made, insured, or guaranteed by a branch, department, or agency of the United States government under § 515 of the Housing Act of 1949, codified in 42 U.S.C. § 1485, the rural rental housing program;
- (3) "Section 1602 affordable housing" means low-income housing property restricted under government regulations pursuant to § 42 of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 42, but for which credits have been surrendered in return for a loan, as authorized by § 1602 of the American Reinvestment and Recovery Act of 2009;
- (4) "Subsidized affordable housing" means property participating in federal programs to incentivize private housing investment in return for rent concessions to needy tenants. These programs include, but are not limited to, those authorized under the § 515 Rural Rental Housing program, § 42 of the Internal Revenue Code of 1986, or § 1602 of the American Reinvestment and Recovery Act of 2009; and
- (5) "Taxpayer" means any owner of property subject to taxation or any party liable for property taxes.

Authority: T.C.A. §§ 4-3-5103 and 67-1-305.

0600-10-.03 Determining Value for LIHTC Property

- (1) The taxable value of LIHTC property shall consist of a restricted use component and a component representing the economic benefit of the subsidy to the property owners.
- (2) The restricted use component shall be the income approach value resulting from using actual rents paid or payable by needy tenants and by such factors for vacancy, collection loss, expenses, reserves, and capitalization rates as are typically experienced by comparable properties in the area in which the property is located or economically comparable areas.
- (3) With regard to the value of the subsidy component, a taxpayer of low-income housing tax credit property shall elect to either:
 - a. Have the assessor include in the assessor's annual appraisal the present value of all future tax credits for each of the unused tax credit years remaining on the property; or
 - b. Have the assessor include in the assessor's annual appraisal, instead of the present value of all future tax credits, the average annual present value of the credit as calculated in (3)(a) above, based on the Compliance Period provided for in the Land Use Restriction Agreement for the particular property being valued.

Authority: T.C.A. §§ 4-3-5103 and 67-1-305.

0600-10-.04 Determining Value for Section 515 Rural Rental Housing Property

- (1) The taxable value of rural rental housing property shall be calculated by the income approach value resulting from using actual rents paid or payable by needy tenants plus the loan subsidy income attributed to the property for the year at issue. Additional income approach factors for vacancy, collection loss, expenses, reserves, and capitalization rates shall be based on those typically experienced by comparable properties in the area in which the property is located or economically comparable areas.
- (2) The loan subsidy income attributed to the property shall be the difference between actual loan amortization and a typical market loan amortization for the year at issue.

Authority: T.C.A. §§ 4-3-5103 and 67-1-305.

0600-10-.05 Determining Value for Section 1602 Affordable Housing

- (1) The taxable value of §1602 affordable housing property shall be calculated by the income approach value resulting from using actual rents paid or payable by needy tenants plus the forgivable loan income attributed to the property for the year at issue. Additional income approach factors for vacancy, collection loss, expenses, reserves, and capitalization rates shall be based on those typically experienced by comparable properties in the area in which the property is located or economically comparable areas.
- (2) The forgivable loan income attributed to the property shall be the amount of loan principal forgiven for the year at issue.

Authority: T.C.A. §§ 4-3-5103 and 67-1-305.

0600-10-.06 Implementation

- (1) The assessor shall implement the value methods required by these rules as of January 1. For each LIHTC property, the taxpayer shall notify the assessor of the taxpayer's election pursuant to rule 0600-10-.03(3) and provide documentation necessary to permit the assessor to apply the method elected. If a taxpayer for a LIHTC property fails to notify the assessor of the taxpayer's election hereunder, the assessor shall choose one of the valuation methods provided in rule 0600-10-.03(3) and apply that method for each year until the particular property's subsidy is exhausted. The assessor shall update the subsidy component of a LIHTC property assessment as appropriate to the alternate method as provided in these rules. The assessor shall update the restricted-use component of a LIHTC property assessment on the occasion of any county-wide reappraisal, or upon being directed by the county or state board of equalization to update the valuation for a year in which the assessment is properly appealed.
- (2) The taxpayer shall be bound by the method it elected under rule 0600-10-.03(3) for each year until the subsidy is exhausted. Existing properties in operation on the effective date of these rules shall be valued by the method elected by the taxpayer under rule 0600-10-.03(3) for the remaining period of the subsidy.

Authority: T.C.A. §§ 4-3-5103 and 67-1-305.

0600-10-.07 Effective date

After this chapter takes effect, these rules shall apply to the tax period beginning January 1, 2016 and all subsequent tax periods.

Authority: T.C.A. §§ 4-3-5103 and 67-1-305.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent
Bennett	X			
Burchett	X			
Hargett				X
Lillard	X			
Roberts	X			
Tarwater	X			
Wilson	X			

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the State Board of Equalization on December 15, 1015 and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/16/15

Rulemaking Hearing(s) Conducted on: (add more dates). 11/06/15

Date: April 8, 2016

Signature: Kelsie E Jones

Name of Officer: Kelsie E Jones

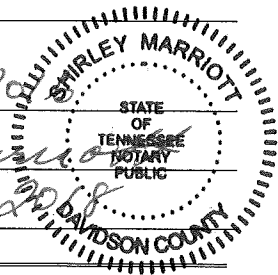
Title of Officer: Executive Secretary, SBOE

Subscribed and sworn to before me on: 08 APRIL 2016

Notary Public Signature: Shirley Marriott

My commission expires on: 08 MAY 2018

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All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slattery III
 Herbert H. Slattery III
 Attorney General and Reporter
April 19, 2016
 Date

Department of State Use Only

Filed with the Department of State on: 4/21/16

Effective on: 7/20/16



Tre Hargett
Secretary of State

Agency Response to Public Hearing Comments

The agency response to comments received at public hearings concerning the rules is as follows:

Comments received at rule-making hearing on 11/6/15

Craig Cardella, Valdosta GA. Mr. Cardella presented slides criticizing the concept of attributing value to federal incentives that do not add annual operating income to affordable housing properties. He proposed that taxable value instead reflect an income approach to value utilizing audited financial reports for the property as filed for government program compliance purposes. Response: audited financial reports for a property reflect actual rent and other income, but no attribution of value to economic benefits to the owner represented by the subsidy. Tennessee case law requires that value for property tax purposes include the subsidy. *Spring Hill LP v. TN State Board of Equalization*, 2003 WL 23099679 (TN Court of Appeals 12/31/2003).

Don Harris & Tim Chandler, USDA Rural Development. These witnesses offered the assistance of their offices in cataloging the impact of higher property taxes on affordable housing operations, including the 'trickle down' impact on needy tenants who would suffer from higher rents or deferred maintenance that have resulted from larger-than-anticipated property taxes on affordable housing properties. Response: Tennessee law does not presently grant a right to a property tax reduction in the circumstances claimed, but allows counties in their discretion to qualify these properties as part of a local property tax relief program for housing or economic development purposes.

Amy Broadwater, Rueben Brown CPA Firm. Ms. Broadwater, whose firm represents affordable housing owners, echoed concerns about the impact of higher property taxes on rent payable by needy tenants. She suggested that at a minimum, the proposed rules should 'smooth' the value attributed to tax credits over the full 30 years that rent restrictions typically remain in place. Response: Tennessee law does not presently grant a right to a property tax reduction in the circumstances claimed, but allows counties in their discretion to qualify these properties as part of a local property tax relief program for housing or economic development purposes. The final adopted version of the rules adopts a longer (15 year) 'smoothing' period for attributing value to tax credits.

David Kleinfelter, Reno & Cavanah, PLLC presented and summarized written comments submitted by a colleague, Dwayne Barrett. He stated his belief that, apart from other considerations, the higher taxable values could subject the rules to a legal challenge based on disparate impact on needy tenants. Response: Tennessee law does not presently grant a right to a property tax reduction in the circumstances claimed, but allows counties in their discretion to qualify these properties as part of a local property tax relief program for housing or economic development purposes.

Matt Scanlon, Gullett Sanford Robinson & Martin, supported Mr. Cardella's comments regarding the perverse (property tax) effect of turning a federal housing incentive into a negative factor in the operating viability of the housing properties and the low-income tenants that were supposed to benefit from the incentive. Response: Tennessee law does not presently grant a right to a property tax reduction in the circumstances claimed, but allows counties in their discretion to qualify these properties as part of a local property tax relief program for housing or economic development purposes.

Alvin Nance, CEO of housing developer Lawler Wood LLC of Knoxville, argued generally against the concept of assigning value to the subsidy, and objected particularly to distributing subsidy value over the shorter period of availability of the tax credits. He pointed instead to the 30 year period of program rent restrictions. Response: Tennessee case law requires that value for property tax purposes include the subsidy. *Spring Hill LP v. TN State Board of Equalization*, 2003 WL 23099679 (TN Court of Appeals 12/31/2003). The final adopted version of the rules adopts a longer (15 year) 'smoothing' period for attributing value to tax credits.

Craig McMurtry of Gateway Properties suggested the Board weigh the positive economic impact to communities of affordable housing as balanced against possible diminution in property tax revenues if subsidies were not assigned a real property value. Response: Tennessee law does not presently grant a right to a property tax reduction in the circumstances claimed, but allows counties in their discretion to qualify these properties as part of a local property tax relief program for housing or economic development purposes.

Tab Burkhalter, Jr. of Maryville offered objections to the rules similar to prior witnesses. He also stated that if counties could be relieved of the revenue burden of myriad other property tax exemptions they would be

positioned to accept fair values for subsidized affordable housing. He also stated that needy tenants in affordable housing should qualify for property tax relief and tax freeze programs available to residential property owners. Response: Tennessee law does not presently grant a right to a property tax reduction in the circumstances claimed, but allows counties in their discretion to qualify these properties as part of a local property tax relief program for housing or economic development purposes.

Randy Button of Nashville spoke in support of the alternate value proposal described in Mr. Cardella's written filing (limit value to income approach using audited financial statements and no attribution of value to subsidies). Response: Tennessee law does not presently grant a right to a property tax reduction in the circumstances claimed, but allows counties in their discretion to qualify these properties as part of a local property tax relief program for housing or economic development purposes.

Additional comments received subsequent to 11/6/15 public hearing

Thomas Amdur, TN Developers Council, wrote generally against the concept of assigning value to the subsidy, and objected particularly to distributing subsidy value over the shorter period of availability of the tax credits. He pointed instead to the 30 year period of program rent restrictions. Response: Tennessee case law requires that value for property tax purposes include the subsidy. *Spring Hill LP v. TN State Board of Equalization*, 2003 WL 23099679 (TN Court of Appeals 12/31/2003). The final adopted version of the rules adopts a longer (15 year) 'smoothing' period for attributing value to tax credits.

David Kleinfelter, Reno & Cavanah, PLLC wrote reiterating his oral testimony, above, and complaining the Board had offered no examples of its approved value method for §1602 properties. He complained the attribution rule for tax credit properties overstated value, and suggested instead the method simply include as taxable value the actual credit allowed for the tax year at issue. Response: The approved value method for §1602 properties is referenced in the Board's decision and record in the Sevierville Apartments appeal. The approved value method for tax credit properties is referenced in the Spring Hill appeal.

Jay Catignani, a registered taxpayer agent who has represented subsidized housing owners in appeals, supported the proposed rules as "long overdue". Response: The agency agrees.

Ralph Perrey, Executive Director of the TN Housing Development Agency (THDA) expressed concern that present methods for valuing tax credit housing were at odds with the federal incentive for these programs, but he lauded the effort to achieve predictability and requested a minimum fifteen year 'smoothing' period for attributing value to the credits. Response: The final adopted version of the rules adopts a longer (15 year) 'smoothing' period for attributing value to tax credits.

Will Denami on behalf of the TN Assessors Association urged the Board to defer the issue to the legislature. Response: The agency will amend or repeal its rules if the legislature mandates a different approach.

Robert Lee, an attorney representing assessors in appeals involving subsidized housing, complained the rules would 'gut' the cost approach to value as well as the appraisal concept of highest and best use. Response: the agency believes the rule would not apply if the highest and best use of a particular property is shown to be other than subsidized multi-family housing. The agency believes the cost approach to value has seldom if ever been relied upon by any party where value of these properties is at issue, nevertheless the cost approach may be relevant in a particular case to validate components of the income approach reflected in the proposed rules.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Tennessee law requires generally that property be assessed for ad valorem tax purposes at its fair market value, ascertained in accordance with official assessment manuals promulgated by the state Division of Property Assessments (Comptroller of the Treasury) and approved by the State Board of Equalization. TCA 67-5-601. Unfortunately no statute or rule defines specific methods for the properties defined in these rules, with the result that a different approach to value may be employed in one county versus another.

The proposed rules establish specific methods of property tax valuation for the following three categories of property:

- (1) "Low-income housing tax credit (LIHTC) property" defined as low-income housing property restricted under government regulations pursuant to § 42 of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 42, the low-income housing tax credit program;
- (2) "Rural rental housing property" defined as property financed or refinanced by a loan made, insured, or guaranteed by a branch, department or agency of the United States government under § 515 of the Housing Act of 1949, codified in 42 U.S.C. § 1485, the rural rental housing program;
- (3) "Section 1602 affordable housing" defined as low-income housing property restricted under government regulations pursuant to § 42 of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 42, but for which credits have been surrendered in return for a loan as authorized by § 1602 of the American Reinvestment and Recovery Act of 2009;

The methods established in the rules substantially restate value concepts that have been approved in contested property tax appeals. Owners of these properties will be affected by these rules in the following respects:

1. All owners will benefit from the certainty that the value of their property will be governed by specific methods required in every county.
2. Owners of tax credit property will benefit from the opportunity to elect an averaged attribution of value to their subsidy over the restricted rent compliance period (typically fifteen years), rather than 'front-loaded' attribution in some counties that results in early year values that exceed conventional (non-subsidized) housing properties that are comparable in all other respects and located in the same county.

Based on the foregoing findings the agency concludes the rules will generally benefit the small businesses that own and operate subsidized (restricted rent) multi-family housing.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The proposed rules should ultimately have no fiscal impact on local governments. The property tax value methods specified in the rules are derived from the results previously determined in contested appeals, and the 'smoothing' option permitted in the rules will simply spread the tax impact of the approved method evenly over fifteen years as opposed to a declining attribution that yields higher values in early years and lower values in later years of the property's restricted rent compliance period.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The proposed rules establish specific methods of property tax valuation for three categories of subsidized multi-family housing property.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. §§ 4-3-5103 and 67-1-305 authorize promulgation of the rules.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Most directly affected are owners of the specified multi-family housing, most of whom urged changes in the rules. A spokesman for local assessors of property urged a legislative solution versus rules.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

Spring Hill LP v. TN State Board of Equalization, 2003 WL 23099679 (TN Court of Appeals 12/31/2003).

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Kelsie Jones, State Board of Equalization (312 Rosa L Parks Ave., Ste. 900, Nashville, TN 37243-1102; 615-747-5379; kelsie.jones@cot.tn.gov); Stephanie Maxwell, Office of Comptroller General Counsel (505 Deaderick St., Ste. 1700, Nashville, TN 37243-1402; 615-401-7964; stephanie.maxwell@cot.tn.gov)

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Same as above.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

See above.

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Will be provided on request.

